IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 408 OF 2004

M/s. Golderest Exports .. Petitioners.

vs.

M/s. Swissgen N.V. & Anr. .. Respondents.

Mr.M. Vasudeo with A.M. Jaykar i/by M/s. Khaitan & Jayakar for petitioners.

Mr. Zal Andhyrujina with V. Gurumurthi and Ms. A. Malhotra for respondents.

CORAM : S.U.KAMDAR, J.

DATE : 1st DECEMBER,2004.

P.C. 1. By the present petition, the petitioners are seeking to challenge an award passed by FOSFA International dated 13.8.2004. It is an admitted position that this is a foreign award. The present award is sought to be challenged by invoking provisions of section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act).

2. The first question which arises for consideration is whether the foreign award can be challenged by invoking the provisions of section 34

of the said Act which fall in Part I of the said Act. In view of the fact that I am only deciding the maintainability of the present arbitration petition, I am neither going through the facts of the present case nor I am dealing with the issues on merits which are raised in the present petition.

3. The learned counsel appearing for the petitioners has contended before me that in view of the judgment of the Apex Court in the case of Bhatia International vs. Bulk Trading S.A.and Anr. reported in (2002) 4 SCC 105, the petition under section 34 to challenge the foreign award is maintainable. He has particularly drawn my attention to paragraphs 21 and 35 of the said judgment and has contended that in absence of the provisions under the said Act prescribing that Part I shall not apply in cases where the arbitration is conducted under Part II of the said Act the petition to challenge a foreign award will lie under Section 34 of the said Act. Thus, according to him, the present petition is maintainable under section 34 of the said Act.

4. The learned counsel appearing for the petitioners has fairly conceded before me that the issue which is raised by him has already been dealt with by the following judgments of the learned Single Judges.

(1) In the case of Forge Shipping Limited vs. Ashapura Minechem Limited, reported in 2003 (4) Mh.L.J. 329;

(2) Jindal Drugs Ltd., Mumbai vs. Noy Vallesina Engineering SPA, Italy, reported in 2002 (2) Mh. L.J. 820; and

(3) Investa Fischer Gmbh & Co.K.B. vs. Polygenta Technologies Ltd., Arbitration Petition No. 38 of 2004 (S.C. Dharmadhikari J.) dated 23.4.2004.

The learned counsel for the petitioner has also drawn my attention to the judgment of the learned Single Judge of this Court in the case of Bombay Gas Company Limited vs. Mark Victor Mascarenhas & Ors., reported in 1998 I LJ 977. This judgment has though taken similar view but was delivered prior to the judgment of the Apex Court in the case of Bhatia International vs. Bulk Trading S.A. and Anr. (supra).

5. The learned counsel for the petitioner however contends that the view taken by the learned Single Judge in the aforesaid judgments is erroneous and incorrect view particularly as it does not interpret appropriately the judgment of the Apex

Court in the case of Bhatia International (supra). I am unable to accept the argument of the learned counsel for the petitioner. In my view, the provisions of Section 34 which inter alia prescribe the grounds of challenge on which the award can be challenged is in para materia to the provisions of Section 48 of the said Act which inter alia confers a right on a person who has suffered a foreign award to object to the execution of the award in the manner laid down therein. If the argument of the learned counsel is accepted then a person who has suffered a foreign award would be entitled to have two rounds of litigation for challenging the said award one by resorting to the provisions of Section 34 of the said Act and thereafter by raising an objection when the said award is put in execution. In my view, such an interpretation would be an absurd interpretation. In view thereof, I fully concur with the view taken by the learned Single Judges in the aforesaid judgments and I find that the present petition is not maintainable under section 34 of the said Act. Hence, I dismiss the same. However, there shall be no order as to costs.